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5 **UNITED STATES DISTRICT COURT**
6 EASTERN DISTRICT OF CALIFORNIA
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9 JOSE ESCOBEDO,
10 Plaintiff,
11 v.
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13 GILDA A. PAPAZIAN aka Trustee of the
14 Gilda A. Papazian Revocable Trust under
15 Trust Agreement dated January 14, 2010, et
16 al.,
17 Defendants.
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Case No. 1:24-cv-00636-SKO

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28 **ORDER DISCHARGING ORDER TO
SHOW CAUSE AND DECLINING
SUPPLEMENTAL JURISDICTION
OVER PLAINTIFF'S STATE LAW
CLAIMS**

(Docs. 1, 28, 31)

19 **I. INTRODUCTION**
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21 On May 30, 2024, Plaintiff Jose Escobedo (“Plaintiff”) filed his complaint against
22 Defendants Gilda A. Papazian also known as Trustee of the Gilda A. Papazian Revocable Trust
23 under Trust Agreement dated January 14, 2010; Kimberly R. Stillmaker also known as Trustee of
24 the Kimberly R. Hudson Revocable Trust under Trust Agreement dated January 14, 2010; and SA
25 & SM LLC doing business as Mariscos El Diamante (“Defendants”), alleging claims under the
26 Americans with Disabilities Act (“ADA”), California’s Unruh Civil Rights Act (“Unruh Act”), and
27 California’s Health and Safety Code. (Doc. 1). These claims stem from alleged barriers Plaintiff
encountered (such as excessive height changes in paths of travel and inaccessible tables) while he
visited “Mariscos El Diamante,” a facility allegedly owned, operated, or leased by Defendants. (See
id.)

28 On November 6, 2024, the undersigned ordered Plaintiff to show cause why the Court should

1 not decline to exercise supplemental jurisdiction over his state law claims considering the Ninth
2 Circuit's decision in *Vo v. Choi*. (See Doc. 28); *Vo v. Choi*, 49 F.4th 1167 (9th Cir. 2022) (affirming
3 a district court's decision to decline supplemental jurisdiction over an Unruh Act claim); *see* 28
4 U.S.C. § 1337(c). Plaintiff timely filed a response on November 20, 2024. (Doc. 31.) For the
5 reasons discussed below, the undersigned shall discharge the order to show cause, decline
6 supplemental jurisdiction over Plaintiff's state law claims, and dismiss those claims without
7 prejudice.¹

8 II. **LEGAL STANDARDS**

9 Under 28 U.S.C. § 1337(a), a court that has original jurisdiction over a civil action "shall
10 have supplemental jurisdiction over all other claims that are so related to claims in the action within
11 such original jurisdiction that they form part of the same case or controversy under Article III of the
12 United States Constitution." The Ninth Circuit has concluded that ADA and Unruh Act claims that
13 derive from a common nucleus of operative fact "form part of the 'same case or controversy' for
14 purposes of § 1337(a)." *Arroyo v. Rosas*, 19 F.4th 1202, 1209 (9th Cir. 2021).

15 However, even where supplemental jurisdiction over a claim exists under § 1337(a), the
16 Court may decline jurisdiction over the claim under § 1337(c) if:

- 17 (1) the claim raises a novel or complex issue of State law,
- 18 (2) the claim substantially predominates over the claim or claims over which the
district court has original jurisdiction,
- 19 (3) the district court has dismissed all claims over which it has original jurisdiction,
or
- 20 (4) in exceptional circumstances, there are other compelling reasons for declining
jurisdiction.

22 28 U.S.C. § 1337(c)(1)-(4).

23 A court deciding whether to apply § 1337(c)(4) must make "a two-part inquiry." *Arroyo*, 19
24 F.4th at 1210. "First, the district court must articulate why the circumstances of the case are
25 exceptional within the meaning of § 1337(c)(4)." *Id.* (citations and internal quotation marks
26 omitted). "Second, in determining whether there are compelling reasons for declining jurisdiction
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28 ¹ The parties consented to the jurisdiction of a U.S. Magistrate Judge on August 14, 2024. (See Docs. 17–19.) This
case was reassigned to the undersigned on November 5, 2024. (See Doc. 26.)

1 in a given case, the court should consider what best serves the principles of economy, convenience,
 2 fairness, and comity which underlie the pendent jurisdiction doctrine articulated in [*United Mine*
 3 *Workers of Am. v. Gibbs*, 383 U.S. 715 (1966)].” *Id.* (citations and internal quotation marks
 4 omitted).

5 After considering § 1367(c)(4) and California’s requirements for bringing Unruh Act claims,
 6 “[n]umerous federal district courts across California have declined to exercise supplemental
 7 jurisdiction over Unruh Act . . . claims brought alongside ADA claims.” *Rutherford v. Nuway Ins.*
 8 *Agency Inc.*, No. SACV 21-00576-CJC-JDE, 2021 WL 4572008, at *1 (C.D. Cal. Apr. 1, 2021).
 9 Underlying these decisions is “the recent confluence of several California-law rules [that] have
 10 combined to create a highly unusual systemic impact on ADA-based Unruh Act cases that clearly
 11 threatens to have a significant adverse impact on federal-state comity.” *Arroyo*, 19 F.4th at 1211.

12 Congress adopted the ADA to address the discrimination encountered by persons with
 13 disabilities, providing a private cause of action to seek injunctive, but not monetary, relief. *See*
 14 *Arroyo v. Rosas*, 19 F.4th 1202, 1205 (9th Cir. 2021) (discussing background and relief available
 15 under the ADA). The Unruh Act likewise prohibits disability discrimination, containing a provision,
 16 Cal. Civ. Code § 51(f), stating that a violation of the ADA also violates the Unruh Act. However,
 17 unlike the ADA, the Unruh Act allows a plaintiff to recover “up to a maximum of three times the
 18 amount of actual damage but in no case less than four thousand dollars.” Cal. Civ. Code § 52(a).

19 In response to perceived abuses of the Unruh Act, California has enacted requirements for
 20 bringing such claims, which the Ninth Circuit has assumed, without deciding, “apply only in
 21 California state court.” *Vo*, 49 F.4th at 1170. For example a provision was added (1) regarding the
 22 contents of demand letters, Cal. Civ. Code § 55.31; (2) imposing heightened pleading requirements,
 23 Cal. Civ. Code § 425.50(a); and (3) requiring an additional filing fee of \$1,000 for so called “high-
 24 frequency litigants,” Cal. Gov’t Code § 70616.5(b), *see* Cal. Civ. Code § 425.55(b) (defining a high-
 25 frequency litigant to include “[a] plaintiff who has filed 10 or more complaints alleging a
 26 construction-related accessibility violation within the 12-month period immediately preceding the
 27 filing of the current complaint alleging a construction-related accessibility violation.”).

28 These heightened pleading requirements apply to actions alleging a “construction-related

1 accessibility claim,” which California law defines as “any civil claim in a civil action with respect
2 to a place of public accommodation, including but not limited to, a claim brought under Section 51,
3 54, 54.1, or 55, based wholly or in part on an alleged violation of any construction-related
4 accessibility standard.” Cal. Civ. Code § 55.52(a)(1). The requirements apply to claims brought
5 under the Unruh Act as well as to related claims under the California Health & Safety Code. *See*
6 *Gilbert v. Singh*, No. 1:21cv1338-AWI-HBK, 2023 WL 2239335, *2 (E.D. Cal. Feb. 27, 2023). By
7 enacting such restrictions, California has expressed a “desire to limit the financial burdens
8 California’s businesses may face from claims for statutory damages under the Unruh Act.” *Arroyo*,
9 19 F.4th at 1209 (internal quotations omitted). However, “Unruh Act plaintiffs have evaded these
10 limits by filing in a federal forum in which [they] can claim these state law damages in a manner
11 inconsistent with the state law’s requirements.” *Arroyo*, 19 F.4th at 1213 (internal quotation marks
12 omitted). Consequently, “the procedural strictures that California put in place have been rendered
13 largely toothless, because they can now be readily evaded.” *Id.*

14 The Ninth Circuit provided substantial guidance on this issue in *Vo v. Choi* in affirming a
15 district court’s order denying supplemental jurisdiction over an Unruh Act claim under § 1337(c)(4).
16 *Vo*, 49 F.4th at 1168. In that case, the district court declined supplemental jurisdiction over the
17 Unruh Act claim after giving the plaintiff the opportunity to respond and before addressing the
18 merits of the case. *Id.* at 1168-69. The Ninth Circuit held that the district court sufficiently
19 explained why the circumstances of the case were exceptional under § 1337(c)(4), agreeing with the
20 district court that “it would not be ‘fair’ to defendants and ‘an affront to the comity between federal
21 and state courts’ to allow plaintiffs to evade California’s procedural requirements by bringing their
22 claims in federal court.” *Id.* at 1171. The Court also affirmed the district court’s finding that the
23 balance of the *Gibbs* values—economy, convenience, fairness, and comity—provided compelling
24 reasons to decline supplemental jurisdiction, stating that “the district court [properly] analyzed Vo’s
25 situation under the *Gibbs* values and determined that the values of fairness and comity favored not
26 retaining jurisdiction over the claim.” *Id.* at 1172. Accordingly, “[g]iven these very real concerns,
27 in addition to the deferential standard of review, [the Ninth Circuit saw] no reason to hold that the
28 district court abused its discretion in determining there were compelling reasons to decline

1 jurisdiction over the Unruh Act claim.” *Id.*

2 III. ANALYSIS

3 The Court begins with the first part of the two-step inquiry under § 1367(c)(4)—whether the
 4 circumstances here are exceptional. *Vo*, 49 F.4th at 1171.

5 As discussed above, California has enacted various requirements that apply to claims
 6 alleging a construction-related accessibility violation. If the Court were to exercise jurisdiction over
 7 Plaintiff’s state law claims, Plaintiff would be permitted to avoid these requirements. *See Arroyo*,
 8 19 F.4th at 1213 (noting that potential evasion of California’s requirements met exceptional-
 9 circumstances prong of § 1367(c)(4)). Further, such evasion would undermine California’s policy
 10 interests in enforcing its requirements—providing monetary relief but limiting burdens on small
 11 businesses and disincentivizing plaintiffs’ attorneys from obtaining “monetary settlements at the
 12 expense of forward-looking relief that might benefit the general public.” *Id.* Plaintiff offers no
 13 argument for why such circumstances should not be deemed exceptional, and there is “little doubt
 14 that the first prong [under § 1367(c)(4)] is satisfied here.” *Vo*, 49 F.4th at 1171. *See also Garcia v.*
 15 *Maciel*, No. 21-CV-03743-JCS, 2022 WL 395316, at *2 (N.D. Cal. Feb. 9, 2022) (collecting cases).

16 Turning to the second part of the inquiry—whether there are other compelling reasons for
 17 declining jurisdiction—the Court considers the *Gibbs* values of economy, convenience, fairness,
 18 and comity. *Vo*, 49 F.4th at 1171. Importantly, this case is an early stage of the litigation and the
 19 merits of Plaintiff’s claims have not yet been addressed. *See Arroyo*, 19 F.4th at 1214 (noting that
 20 the *Gibbs* values did not support declining supplemental jurisdiction where the case was at a “very
 21 late stage”). This is not a case “where it makes no sense to decline jurisdiction . . . over a pendent
 22 state law claim that that court has effectively already decided.” *Id.* Notably, Plaintiff makes no
 23 argument that the stage of this case warrants exercising jurisdiction.

24 Moreover, considering the above discussion of California’s requirements for Unruh Act
 25 claims, it would not be fair, nor would comity be served, by allowing Plaintiff’s state law claims to
 26 proceed without the state court being able to enforce its policy interests as reflected in its various
 27 procedural requirements. *Id.* at 1213 (noting “comity-based concerns that California’s policy
 28 objectives in this area were being wholly thwarted” by plaintiffs being able to bring Unruh Act

1 claims in federal court). Plaintiff concedes in his response to the show cause order that he would
 2 be considered a high-frequency litigant and would otherwise have to meet certain California
 3 requirements, such as paying the \$1,000 filing fee in state court.² (Doc. 31 at 2 (“Plaintiff
 4 acknowledges that he would be considered a high-frequency litigant under California law as he filed
 5 more than ten construction-related accessibility claims in the twelve months preceding the filing of
 6 the instant action.”).)

7 Plaintiff contends that requiring him to bring a second action in state court “would be
 8 duplicative and would only increase the ultimate burden on the subject businesses, as Plaintiff would
 9 be entitled to seek recovery of the additional attorney’s fees and costs spent bringing the second
 10 action.” (Doc. 31 at 3.) As an initial matter, this argument assumes that Plaintiff will be successful
 11 in this action. Even accepting such an assumption, the fact that the litigation could prove duplicative
 12 or increase costs does not, in light of the other considerations, warrant retaining jurisdiction. As one
 13 court has concluded, “if plaintiff legitimately seeks to litigate this action in a single forum, plaintiff
 14 may dismiss this action and refile it in a state court in accordance with the requirements California
 15 has imposed on such actions.” *Garibay v. Rodriguez*, No. CV 18-9187 PA (AFMX), 2019 WL
 16 5204294, at *6 (C.D. Cal. Aug. 27, 2019). Moreover, it is California’s prerogative to impose a
 17 heightened filing fee for high-frequency litigants to curb abuses of the Unruh Act at the risk of the
 18 fee being ultimately paid by defendants. It would undermine comity and fairness were Plaintiff
 19 permitted to proceed with his state law claims considering California’s policy concerns.

20 Accordingly, considering the two-step inquiry under § 1367(c)(4), the undersigned
 21 concludes that this case presents “exceptional circumstances” such that “there are other compelling
 22 reasons for declining [supplemental] jurisdiction” over Plaintiff’s state law claims.

23 **IV. ORDER**

24 The Court’s order to show cause (Doc. 28) is hereby DISCHARGED. For the reasons set
 25 forth above, IT IS HEREBY ORDERED:

26 1. Pursuant to 28 U.S.C. § 1367(c)(4) and *Vo v. Choi*, 49 F.4th 1167 (9th Cir. 2022),

27 ² While the Court acknowledges Plaintiff’s concession, it need not determine whether he is in fact a high-frequency
 28 litigant. *Vo*, 49 F.4th at 1174 (noting that court was not required to determine whether the plaintiff was in fact a high-frequency litigant).

1 the Court DECLINES to exercise supplemental jurisdiction over Plaintiff's Unruh
2 Act claim and Cal. Health & Safety Code § 19955 and § 19959 claims; and
3 2. Plaintiff's Unruh Act and Cal. Health & Safety Code § 19955 and § 19959 claims
4 are DISMISSED WITHOUT PREJUDICE pursuant to 28 U.S.C. § 1337(c)(4).

5 IT IS SO ORDERED.
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7 Dated: November 20, 2024

Is/ Sheila K. Oberto
8 UNITED STATES MAGISTRATE JUDGE

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